

118233
DECISION



21657
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205394

DATE: April 26, 1982

MATTER OF: Kenneth O. Dudley

DIGEST: Payment for temporary quarters subsistence expenses is denied for the period the employee rented a home he had contracted to purchase. Although ultimately, he did not purchase the house because he could not obtain the required financing, the house was his permanent residence due to his intent to purchase at the time he moved in.

The Accounting and Finance Officer, Defense Contract Administration Services Region, Atlanta, Defense Logistics Agency, has requested an advance decision on the propriety of paying temporary quarters subsistence expenses claimed by Mr. Kenneth O. Dudley, an agency employee, for the period of time that he and his wife occupied a home on a rental basis subsequent to entering into a contract to purchase the home. This request was assigned Control Number 81-30 by the Per Diem, Travel and Transportation Allowance Committee and forwarded to us by endorsement. For the reasons set forth below, Mr. Dudley is not entitled to temporary quarters subsistence expenses since at the time he and his wife occupied the home he intended to occupy the residence on a permanent basis.

Mr. Dudley transferred from Pascagoula, Mississippi, to the Kennedy Space Center, Florida, in June 1981. In connection with the transfer his travel order authorized reimbursement for temporary quarters subsistence expenses for up to 24 days. On June 2, 1981, during an authorized house hunting trip he entered into a contract to purchase a home in Cocoa Beach, Florida. Later that same day he was advised that his income was not sufficient to qualify for the necessary home loan and that he would be unable to purchase the home unless his wife obtained a position in her field as a school teacher.

On June 3, Mr. Dudley signed a 40-day lease on the home on which he had executed the sales contract. The lease, an addendum to the sales contract, provided that the rental period would be from June 8, 1981, "until

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closing, July 17, 1981" and that should the sales transaction not close, the buyer agreed to vacate within 10 days on notice by the seller. That same day, he purchased a 45-day "wraparound" loan contract to secure the interest rate on the residence.

Mr. Dudley and his wife departed for Pascagoula on June 3 and returned to Cocoa Beach on June 7. They resided in a motel on June 7 and upon arrival of their furniture on June 8, they occupied the home which they had contracted to purchase. He states that about June 17, it became apparent that his wife would not be able to obtain employment and that they began to search for another residence. On July 20, 1981, he purchased another residence.

The agency has not allowed reimbursement for the claimed temporary quarters subsistence expenses on the basis that at the time the employee occupied the residence he intended that the home would be his permanent residence.

Mr. Dudley contends that he is entitled to payment of the claimed temporary quarters subsistence expenses for the period June 7 through July 1, 1981. He notes that he and his wife unpacked only the "bare necessities" in anticipation of a further move in the local area. He states that although there was an intent to purchase the home during the house hunting trip, his ability to buy was almost nonexistent since the loan was immediately denied. Furthermore, he points out that the lease was for a definite 40-day period and that upon failure to close the sale at that time the seller could have required that the home be vacated within 10 days. Thus, he contends that his occupancy of the home constituted a temporary quarters situation. In support of this view he cites Paragraph C13001, Volume 2 of the Joint Travel Regulations (2 JTR) which he states provides that a residence will not be considered temporary quarters when the employee continues occupancy indefinitely.

Section 5724a(a)(3), title 5, United States Code (1976), is the statutory authority for reimbursement

of temporary quarters allowance. Paragraph 2-5.2c of the Federal Travel Regulations (FPMR 101-7)(May 1973), implementing the statute, defines "temporary quarters" as follows;

"What constitutes temporary quarters.
The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized." (Emphasis supplied.)

Our decisions consistently hold that employees occupying and paying rent for homes they intend to purchase are not entitled to temporary quarters subsistence expenses. See Matter of Trest, B-183641, October 9, 1975 and Matter of Mason, B-196284, August 14, 1980, and cases cited therein. The employee's intent is determined at the time he first occupied the residence with the intention to do so permanently. See Trest. Thus, we have held that later vacating the home because of inability to finance the purchase does not convert the home to temporary quarters. See Matter of Cain, B-200082, February 25, 1981.

The execution of the sales contract on June 2, the rental agreement on June 3 which contemplated a "closing" date of July 17, and the purchase of the 45-day "wrap-around" loan contract that same day, together with his wife's efforts to find employment in order to qualify for the necessary loan, clearly establish that Mr. Dudley intended to purchase the home at the time that he and his wife entered into occupancy on June 8. As indicated above, the fact that they later vacated the house due to inability to finance the purchase did not convert the home to temporary quarters.

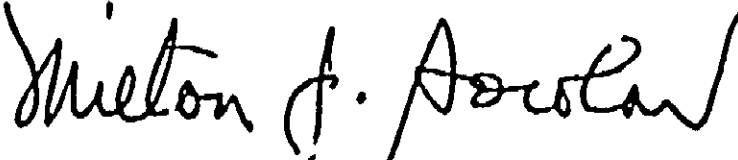
Mr. Dudley advances the view that since 2 JTR C13001 indicates that occupancy of quarters for an indefinite period is indicative that the quarters should be considered permanent, the fact that a short term lease is executed indicates a temporary occupancy. This is not

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the case. The short term lease executed by Mr. Dudley seems to have been for the sole purpose of occupancy of the house until the sale could be completed and shows an intent at the time he moved in to make the quarters permanent.

We note that the fact that Mr. Dudley and his wife did not unpack much of the furniture upon occupancy does not refute an intent to permanently reside in the home which they contracted to purchase, but only indicates their awareness that such intent might not be realized.

Temporary quarters subsistence expenses should be paid for lodging at the motel on June 7, 1981, since the commercial lodgings were occupied prior to the occupancy of permanent quarters. However, Mr. Dudley is not entitled to temporary quarters subsistence expenses other than for that 1 day when he and his wife occupied commercial lodgings.

for 
Comptroller General
of the United States